

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MONTECA D. STRANGE,

Plaintiff,

vs.

Civil Action 2:05-cv-737
Judge Smith
Magistrate Judge King

CHILLICOTHE CORRECTIONAL
INST.,

Defendant.

ORDER
AND
REPORT AND RECOMMENDATION

Plaintiff, a state inmate, seeks leave to proceed *in forma pauperis*. Plaintiff's application is **GRANTED**. All judicial officers who render services in this action shall do so as if the costs had been prepaid.

However, having reviewed the complaint as required by 28 U.S.C. §§1915(e), 1915A, the Court concludes that it lacks jurisdiction to proceed.

In this civil rights action, plaintiff alleges that "[his] mental thoughts are being suppressed." *Complaint*, at p.5. Moreover, although he was given "two small white pills" for a medical condition, when he returned to pick up his medication the next day, "the pills were not the same pills and the doctor ask[ed] me if I had night sweats." *Id.*, at p.6. Plaintiff has lost weight and feels weak. *Id.*

The only defendant named in the action is the Chillicothe Correctional Institution. By operation of the Eleventh Amendment to the United States Constitution, this Court lacks jurisdiction to consider civil rights claims under 42 U.S.C. §1983 against the state or its agencies without the state's consent. *See Alabama v. Pugh*, 438 U.S. 781

(1978).

It is therefore **RECOMMENDED** that the action be dismissed for lack of subject matter jurisdiction.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within ten (10) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1); F.R. Civ. P. 72(b). Response to objections must be filed within ten (10) days after being served with a copy thereof. F.R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to de novo review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Federation of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

July 28, 2005

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge